

ESTTA Tracking number: **ESTTA135659**

Filing date: **04/16/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Rock of Ages Corporation
Granted to Date of previous extension	04/15/2007
Address	772 Graniteville Road Graniteville, VT 05654 UNITED STATES
Attorney information	Adam D. Resnick Arent Fox LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036 UNITED STATES resnick.adam@arentfox.com

Applicant Information

Application No	78830296	Publication date	10/17/2006
Opposition Filing Date	04/16/2007	Opposition Period Ends	04/15/2007
Applicant	Fortune Fashions Industries, LLC attn: Bruce Goldberg 4700 S. Boyle Avenue Vernon, CA 90058 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Tops

Attachments	Notice_of_Opposition.pdf (15 pages)(352666 bytes)
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Signature	/Adam D. Resnick/
Name	Adam D. Resnick
Date	04/16/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Ser. No. 78/830,296 for the mark Rock of Ages, filed on March 6, 2006, and published on October 17, 2006.

ROCK OF AGES CORPORATION,)	
)	
Opposer,)	
)	
v.)	Opp. No. _____
)	
FORTUNE FASHIONS INDUSTRIES, LLC,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer Rock of Ages Corporation, a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 772 Graniteville Road, Graniteville, Vermont 05654 (“Opposer”), believes that it will be damaged by the registration of the mark shown in Application Serial No. 78/830,296, and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for opposition, Opposer alleges the following:

1. Opposer is the owner of all right, title and interest in and to the famous marks ROCK OF AGES and ROCK OF AGES & Design, which have been used extensively on and in connection with granite products, including granite memorials and monuments (“Opposer’s Goods”).
2. Opposer’s rights in the marks ROCK OF AGES and ROCK OF AGES & Design have been recognized by the United States Patent and Trademark Office, which issued to

Opposer U.S. Registrations Nos. 095,516, 284,826, 286,033, 641,854, 641,855, 1,002,808, 1,544,467, and 3,050,467 for the marks ROCK OF AGES and ROCK OF AGES & Design (the “ROCK OF AGES Marks”).

3. Opposer’s registrations are valid, subsisting, and provide prima facie evidence, and, in the case of U.S. Registrations Nos. 095,516, 284,826, 286,033, 641,854, 641,855, 1,002,808, and 1,544,467, conclusive evidence, of Opposer’s exclusive right to use the marks in commerce. Copies of the registration information from the web site of the United States Patent and Trademark Office are attached hereto as Exhibit A.

4. Since long prior to the filing date of Applicant’s Application Serial No. 78/830,296, and since long prior to any use that Applicant may claim, Opposer has continuously used its ROCK OF AGES Marks in interstate commerce in connection with the advertising, promotion, and sale of Opposer’s Goods, including on and in connection with clothing and clothing accessories (“Opposer’s Clothing Goods”). As a result, the ROCK OF AGES Marks have become well known and famous as a distinctive indicator of the origin of Opposer’s Goods and as a symbol of Opposer’s valuable goodwill.

5. Since long prior to the filing date of Application Serial No. 78/830,296, and since long prior to any first use date that Applicant may claim, the ROCK OF AGES Marks have become particularly well known in the relevant trade through extensive advertising and promotion in commerce in connection with the sale of Opposer’s Goods.

6. Opposer has made substantial expenditures in advertising and promoting the ROCK OF AGES Marks and, thus, the ROCK OF AGES Marks have become well known and famous among purchasers as a distinctive indicator of the origin of the goods and services offered by Opposer.

7. Notwithstanding Opposer's prior established rights in and to the ROCK OF AGES Marks, Applicant filed an application with the United States Patent and Trademark Office to register the identical mark Rock of Ages (Ser. No. 78/830,296) for "tops," in International Class 25.

8. Upon information and belief, Applicant made no use of its alleged mark prior to the filing date of its application.

9. Upon information and belief, Applicant had constructive knowledge of, knew, or had reason to know of Opposer's prior rights in the ROCK OF AGES Marks when Applicant filed its application.

10. Opposer has not authorized any use or application for registration of ROCK OF AGES by Applicant.

Count I - Likelihood of Confusion - §2(d)

11. The mark which Applicant seeks to register is identical to or so closely resembles the ROCK OF AGES Marks that the use and registration thereof is likely to cause confusion, mistake and/or deception as to the source or origin of Applicant's goods in violation of Section 2(d) of the Trademark Act, and will injure and damage Opposer and the goodwill and reputation symbolized by the ROCK OF AGES Marks.

12. Opposer's Clothing Goods and the goods of Applicant are identical or so closely related that the public is likely to be confused, to be deceived, or to assume erroneously that Applicant's goods are those offered by Opposer, or that Applicant is in some way connected with, sponsored by, or affiliated with Opposer, all to Opposer's irreparable damage.

13. Likelihood of confusion is enhanced because the ROCK OF AGES Marks are strong, famous, well-known, and entitled to a broad scope of protection.

14. Likelihood of confusion is enhanced by the fact that Opposer's Clothing Goods and Applicant's goods will likely be offered and distributed to the same classes of prospective purchasers.

15. Likelihood of confusion is enhanced by the fact that the parties will likely advertise their goods in the same or similar types of media.

16. Likelihood of confusion in this case is enhanced by the fame of the ROCK OF AGES Marks and by the fact that consumers of the relevant goods will associate Applicant's alleged mark with goods provided, approved, or endorsed by Opposer.

17. Applicant is not affiliated or connected with Opposer and has not been endorsed or sponsored by Opposer, nor has Opposer approved any of the goods offered or sold or intended to be sold by Applicant under its alleged mark.

Count II - Likelihood of Deception/False Suggestion of Connection - Section 2(a)

18. Applicant's alleged mark is identical to or so closely resembles the ROCK OF AGES Marks that Applicant's alleged mark is likely to cause deception in violation of Section 2(a) of the Trademark Act in that the mark misdescribes the nature or origin of the goods, purchasers are likely to believe that the misdescription actually describes the nature or origin of the goods, and this is likely to materially alter purchasers' decisions to acquire Applicant's goods.

19. Applicant's alleged mark is identical to or so closely resembles the ROCK OF AGES Marks that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's alleged mark points uniquely to Opposer, and purchasers will assume that goods offered under Applicant's alleged mark are connected with Opposer.

20. When Applicant's alleged mark is used in connection with the goods of the type described in its application, said mark will cause purchasers to mistakenly assume that Opposer is endorsing, attempting to promote, or encouraging the sale of Applicant's goods by permitting Applicant's alleged mark to be used in connection with such goods.

21. Applicant's alleged mark is deceptive in that it falsely suggests a connection with, or approval by, Opposer.

22. Use and registration of Applicant's alleged mark will deprive Opposer of the ability to protect its reputation, persona, and goodwill.

Count III - Dilution - §43(c)

23. For many years, many of Opposer's ROCK OF AGES Marks have been widely used and extensively advertised in the United States and internationally, and therefore, these ROCK OF AGES Marks have become well known and famous as a distinctive symbol of Opposer's goodwill.

24. Opposer's famous ROCK OF AGES Marks became well known and famous before Applicant made any use of or applied for registration of its alleged Rock of Ages mark.

25. Applicant's alleged mark will cause dilution of the distinctive quality of Opposer's famous ROCK OF AGES Marks.

26. Use and registration of Applicant's alleged mark will lessen the capacity of Opposer's famous ROCK OF AGES Marks to identify and distinguish Opposer's goods.

27. Use and registration of Applicant's alleged mark will tarnish the goodwill symbolized by Opposer's famous ROCK OF AGES Marks.

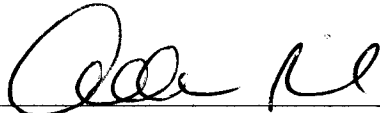
28. Use and registration of Applicant's alleged mark will cause dilution by blurring, thus diluting or weakening the unique and distinctive significance of Opposer's famous ROCK

OF AGES Marks to identify and distinguish one source.

29. By reason of all of the foregoing, Opposer will be damaged by the registration of Applicant's alleged mark and registration should be refused.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied.

ROCK OF AGES CORPORATION

By 

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Date: 4/16/07

Attorneys for Opposer

EXHIBIT A

Int. Cl.: 19

Prior U.S. Cl.: 12

United States Patent and Trademark Office
10 Year Renewal

Reg. No. 95,516
Registered Feb. 24, 1914
Renewal Term Begins Feb. 24, 1994

TRADEMARK
PRINCIPAL REGISTER



ROCK OF AGES QUARRIES, INC. (VER-
MONT CORPORATION)
P. O. BOX 482
BARRE, VT 05641, BY CHANGE OF
NAME AND CHANGE OF NAME
FROM BOUTWELL, MILNE &
VARNUM CO. (VERMONT FIRM),
BARRE, VT

FOR: GRANITE BLOCKS AND MON-
UMENTAL STONES, IN CLASS 12 (INT.
CL. 19).

FIRST USE 8-1-1913; IN COMMERCE
8-1-1913.

SER. NO. 71-073,570, FILED 10-23-1913.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Dec. 27, 1994.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 19

Prior U.S. Cl.: 50

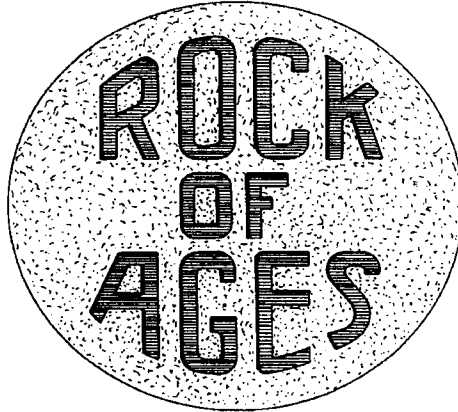
United States Patent and Trademark Office
10 Year Renewal

Reg. No. 284,826

Registered July 7, 1931

Renewal Term Begins July 7, 1991

TRADEMARK
PRINCIPAL REGISTER



ROCK OF AGES CORPORATION (VER-
MONT CORPORATION)
P.O. BOX 482
BARRE, VT 05641

OWNER OF U.S. REG. NO. 95,516.

FOR: GRANITE MONUMENTS AND
MEMORIALS, IN CLASS 50 (INT. CL. 19).
FIRST USE 5-22-1924; IN COMMERCE
5-22-1924.

SER. NO. 71-310,849, FILED 2-7-1931.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Sep. 10, 1991.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 19

Prior U.S. Cl.: 12

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 286,033

Registered Aug. 11, 1931

Renewal Term Begins Aug. 11, 1991

TRADEMARK
PRINCIPAL REGISTER



ROCK OF AGES CORPORATION (VER-
MONT CORPORATION)
P.O. BOX 482
BARRE, VT 05641

OWNER OF U.S. REG. NO. 95,516.

FOR: POLISHED BLOCKS OR SLABS
OF GRANITE, AND GRANITE HEWN,

DRESSED, POINTED, PITCHED, POL-
ISHED, OR OTHERWISE MANUFAC-
TURED AND SUITABLE FOR USE FOR
MONUMENTAL OR BUILDING PUR-
POSES, IN CLASS 12 (INT. CL. 19).
FIRST USE 5-22-1924; IN COMMERCE
5-22-1924.

SER. NO. 71-313,358, FILED 4-13-1931.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Oct. 15, 1991.*

COMMISSIONER OF PATENTS AND TRADEMARKS

United States Patent Office

641,854

Registered Feb. 19, 1957

PRINCIPAL REGISTER Trademark

Ser. No. 8,576, filed May 18, 1956



Rock of Ages Corporation (Vermont corporation)
Burlington, Vt.

For: GRANITE SURFACE PLATES, in CLASS 50.
First use Aug. 24, 1953; in commerce Aug. 24, 1953.
Owner of Reg. Nos. 95,516, 284,826, and 286,033.

United States Patent Office

641,855

Registered Feb. 19, 1957

PRINCIPAL REGISTER Trademark

Ser. No. 9,897, filed June 8, 1956

ROCK OF AGES

Rock of Ages Corporation (Vermont corporation)
Burlington, Vt.

For: GRANITE MONUMENTS AND MEMORIALS,
in CLASS 50.
First use Apr. 15, 1938; in commerce Apr. 15, 1938.
Owner of Reg. Nos. 95,516, 284,826, and 286,033.

Int. Cl.: 19

Prior U.S. Cl.: 12

United States Patent Office

Reg. No. 1,002,808
Registered Jan. 28, 1975

TRADEMARK
Principal Register



Rock of Ages Corporation (Vermont corporation)
P.O. Box 482
Barre, Vt. 05641

For: GRANITE PRODUCTS FOR INDUSTRIAL
USE—NAMELY, SURFACE PLATES, TOOL MAK-
ERS' FLATS, MACHINE BASES, PARALLELS,
ANGLE PLATES, AND STRAIGHT EDGES—in
CLASS 19 (U.S. CL. 12).

First use Aug. 24, 1953 as to granite surface plates; in
commerce Aug. 24, 1953.

Owner of Reg. Nos. 95,516, 641,855, and others.

Ser. No. 10,653, filed Jan. 10, 1974.

Int. Cl.: 19

Prior U.S. Cls.: 12 and 50

United States Patent and Trademark Office

Reg. No. 1,544,467

Registered June 20, 1989

**TRADEMARK
PRINCIPAL REGISTER**



**ROCK OF AGES CORPORATION (VERMONT
CORPORATION)
P.O. BOX 482
BARRE, VT 05641**

**FOR: GRANITE MONUMENTS AND MARK-
ERS, IN CLASS 19 (U.S. CLS. 12 AND 50).**

**FIRST USE 6-26-1981; IN COMMERCE
6-26-1981.
OWNER OF U.S. REG. NOS. 284,826, 1,002,808
AND OTHERS.**

**SER. NO. 753,457, FILED 9-22-1988.
R. G. COLE, EXAMINING ATTORNEY**

Int. Cl.: 19

Prior U.S. Cls.: 1, 12, 33 and 50

United States Patent and Trademark Office

Reg. No. 3,050,467

Registered Jan. 24, 2006

**TRADEMARK
PRINCIPAL REGISTER**



ROCK OF AGES CORPORATION (DELAWARE
CORPORATION)
772 GRANITEVILLE ROAD
GRANITEVILLE, VT 05654

FIRST USE 1-14-2005; IN COMMERCE 1-14-2005.

SER. NO. 78-551,368, FILED 1-21-2005.

FOR: GRANITE PRODUCTS, NAMELY ROUGH
GRANITE BLOCKS, SLABS, MONUMENTS, MEM-
ORIALS, TABLETS, MAUSOLEUMS, AND TOMB-
STONES, IN CLASS 19 (U.S. CLS. 1, 12, 33 AND 50).

KARANENDRA S. CHHINA, EXAMINING ATTOR-
NEY